LE COPY

MOTION FILED APR 15 1963

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1963

No. [redacted] 39

THE NEW YORK TIMES COMPANY, A CORPORATION,
Petitioner,

vs.

L. B. SULLIVAN,
Respondent.

MOTION OF TRIBUNE COMPANY FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

HOWARD ELLIS,
KEITH MASTERS,
DON H. REUBEN,
130 East Randolph Drive,
Chicago 1, Illinois,
Attorneys for the Tribune Company,
Tribune Tower, Chicago, Illinois.

Of Counsel:
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS.
Chicago 1, Illinois.

THE SOUTHERN-GRAPHIC PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 606

THE NEW YORK TIMES COMPANY, A CORPORATION,
Petitioner,

vs.

L. B. SULLIVAN,
Respondent.

MOTION OF TRIBUNE COMPANY FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

Now comes the Tribune Company, an Illinois corporation, by its attorneys, Howard Ellis, Keith Masters and Don H. Reuben, and moves this Court for leave to file a brief as amicus curiae in support of petitioner in this cause. The petitioner, The New York Times Company, has consented to the filing of such a brief; the respondent, Sullivan, has refused consent.

The Tribune Company publishes the *Chicago Tribune*, one of the world's large daily and Sunday circulating newspapers; the *Chicago Tribune* is published in Chicago, Illinois, where the paper's business and editorial offices are also located. Although the vast bulk of the *Chicago Tribune's* circulation is within the State of Illinois, it also

has circulation in Alabama and every other state in the Union, as well as in thirty-eight foreign countries.

The *Tribune*, like *The New York Times*, receives advertising revenues from nationwide sources; also, *Tribune* employees occasionally make interstate trips as a result of this business. The Tribune Company's interstate news-gathering activities are likewise closely parallel to those of *The New York Times*. Thus, in addition to the news supplied by the various wire services, the *Tribune* also obtains news from "stringers"; some several hundred of these independent contractors, located throughout the United States, are constantly transmitting out-of-state news to the *Tribune*. Moreover, oftentimes when happenings of great interest occur, the *Tribune*, like *The Times*, dispatches its reporters directly from its editorial offices to the scene of the event. *Tribune* reporters have recently traveled to: *Texas* for the Billie Sol Estes scandal; *Wisconsin* to expose organized crime in that state; *Florida* for the Cuban crisis; *Michigan* to report the Romney election; *Ohio* to report the Dr. Sam Sheppard case; and *Florida* and *Arizona* for baseball spring training.

The *Tribune* has carefully followed the several and extraordinary "libel" proceedings against *The Times* in Alabama from the time those suits first began.[1] The *Tribune* is vitally concerned not only because it has an obvious and direct interest as another major newspaper with multi-state circulation, advertising, and newsgathering

1. Nine separate actions for libel have been instituted against *The Times*, five as a result of the advertisement in issue here and four because of a news story by Harrison Salisbury concerning a desegregation crisis. All of the plaintiffs are Alabama public officials. See *Connor* v. *New York Times Co.*, 310 F. 2d 133; *New York Times Co.* v. *Conner*, 291 F. 2d 492; *New York Times Co.* v. *Sullivan*, 144 So. 2d 25 (Ala.).

activities, but also because the *Tribune* has a well-established tradition of appearing and participating in litigations that threaten the free press. See *Near* v. *Minnesota*, 283 U. S. 697. The instant case is precisely such a suit; it is an attempt to reincarnate by a civil libel suit the infamous doctrine of seditious libel and combine it with the now long repudiated practice of trying a defendant away from home and in the most hostile forum available.

When the question of the validity of service upon *The Times* in Alabama was heard by the Fifth Circuit in the related litigation of *New York Times* v. *Conner*, 291 F. 2d 492, the *Tribune* filed a brief as amicus curiae attacking that service as unconstitutional. In seeking leave to file that brief, the *Tribune* submitted the affidavit of its editor, W. D. Maxwell, outlining the destructive impact sanctioning service in Alabama would have upon freedom of the press; Mr. Maxwell's affidavit was later extensively quoted in one of journalism's standard handbooks. See Thayer, *Legal Control Of The Press* (4th Edition, Foundation Press), pp. 216, *et seq.*

We believe Mr. Maxwell's affidavit is equally pertinent here because the same service is again presented and now in a context[2] that graphically highlights every danger to the free press described in the affidavit; the pertinent portions of the affidavit are accordingly submitted as an Appendix in support of this Motion.

We respectfully request the Court grant the Tribune Company leave to file a brief as amicus curiae addressed to the following propositions:

(a) Service upon *The New York Times* in Alabama violates constitutional guarantees of due process and

---

2. The appeal in the *Conner* case was interlocutory pursuant to 28 U. S. C. § 1292b and was heard before trial.

freedom of speech and press as secured by the First and Fourteenth Amendments.

(b) The holding that the language complained of is libelous of the respondent and the judgment he was awarded violate constitutional guarantees of due process and freedom of speech and press as secured by the First and Fourteenth Amendments.

Respectfully submitted,

HOWARD ELLIS,
KEITH MASTERS,
DON H. REUBEN,
130 East Randolph Drive,
Chicago 1, Illinois,
Attorneys for the Tribune Company,
Tribune Tower, Chicago, Illinois.

Of Counsel:
KIRKLAND, ELLIS, HODSON, CHAFFETZ & MASTERS.
Chicago 1, Illinois.

April 15, 1963.

APPENDIX.

IN THE UNITED STATES COURT OF APPEALS,
For the Fifth Circuit.

No. 18589.

THE NEW YORK TIMES COMPANY, ET AL.,
Defendants-Appellants,

vs.

EUGENE CONNOR, ET AL.,
Plaintiffs-Appellees.

AFFIDAVIT.

STATE OF ILLINOIS,
COUNTY OF COOK, } ss.

W. D. MAXWELL, having been duly sworn on oath, deposes and says:

1. That he is the First Vice-President of the Tribune Company, an Illinois corporation, and is the Editor of the Chicago Daily Tribune and the Chicago Sunday Tribune. He makes this affidavit in support of the Tribune Company's motion to file a brief *amicus curiae* to the Court in this cause.

3. • • • The instant litigation has also been followed with great interest and concern by many other newspapers

of the nation; editorial comment has appeared in such publications as the *Southern Farm and Home Quarterly* for April, May and June, p. 1; *The Charleston, West Virginia Sunday Gazette-Mail*, October 9, 1960, p. 10A; *Editor & Publisher*, September 10, 1960, p. 76; *The Bulletin of The American Society of Newspaper Editors*, January 1961, p. 9; *The Atlanta Journal and Constitution*, September 25, 1960, p. 23; *The Nation*, November 26, 1960, p. 406, and *The Washington Post*, October 16, 1960, Section E, p. 1; and *The Chicago Tribune*, itself, September 28, 1960.

4. The Tribune Company believes the instant action vitally affects freedom of the press for the following reasons:

(a) The impact of the lower court's decision is that a newspaper exposes itself to a prolix, protracted and inevitably expensive litigation in a foreign jurisdiction whenever it assigns a reporter to visit that jurisdiction and cover a news story. Affiant is informed and believes that the cost incurred and to be incurred here by the New York Times in defending the suits against it in the State of Alabama is so substantial that no newspaper could finance such litigation as an ordinary day to day cost of doing business. (As to the financial condition of typical newspapers see the series of three articles by Robert U. Brown in *Editor & Publisher*, April 2, 1960 (p. 9), April 9, 1960 (p. 9), and April 16, 1960 (p. 11).)

(b) Because of the nature and content of the article complained of and the Times' well known editorial views concerning segregation and integration, any publisher such as the New York Times encounters grave difficulty in obtaining a fair trial in Alabama. The inability to obtain a fair trial is not peculiar to the New York Times but exists whenever a foreign publisher must defend an article or editorial away from home and in a community that bears antipathy towards his editorial viewpoint and his publication's content.

(c) At times, because of peculiar local situations,

local newspapers have been unwilling or unable to expose or publicize a manifest local evil, practice or condition. Oftentimes such local vice or wrong is first exposed by outside newspapers and many times by out-of-state newspapers that send their reporters to get the facts. Affiant believes sanctioning service of process against the New York Times in the instant case would necessarily discourage reporting and exposing abuses and corruption away from a publisher's home; publishers and the public alike would thereby be deprived of one of the most important benefits inherent in freedom of the press. In the past, out-of-state publishers have addressed themselves and been effective in bringing reforms in instances such as the following:

(1) *Speed traps:* Small localities located on major interstate routes oftentimes maintain speed traps to bilk unsuspecting travelers into paying exorbitant and unwarranted traffic fines. Many Metropolitan newspapers, and the Tribune in particular, periodically publish stories exposing such traps, to promote reform in the areas involved. The articles have been effective and even prompted one newspaper published in a state where traps traditionally flourish to warn that if the local authorities continued to engage in such practices, out-of-state papers would continue to expose the situation and thus cause untold economic damage to the areas involved through a loss of tourist traffic.*

(2) *Phenix City, Alabama:* Phenix City, Alabama, was one of the most lawless and corrupt cities of the twentieth century and there was no newspaper voice in the city to protest the outrage. Reform was finally accomplished because of the publicity given the entire condition by the outside press, particularly the Georgia newspapers.

(3) *Centralia, Illinois, Mine Disaster:* In a

* See Louisville, Kentucky *Courier Journal*, December 6, 1960.

mine disaster in this Illinois town in the late 1940's scores of men lost their lives. The St. Louis Post-Dispatch was among the many papers from without the area that exposed the loose practices in operating and inspecting the mine and promoted the reforms that thereafter occurred in mining technology and methods. In 1948, the Post-Dispatch won a Pulitzer Prize for its work.

(4) *The Columbians, Inc.:* The Columbians were a militant, anti-semitic organization which threatened insurrection in the state of Georgia in the late 1940's. The Washington Post, Washington, D. C., publicized the organization and its practices and ultimately caused its demise.

(5) *Nevada Bureau of Internal Revenue:* In the early 1950's the Nevada tax department was riddled with corruption and unlawful practices. These evils were cured as a result of a series of articles published by the San Francisco Examiner. A Pulitzer Prize was awarded the Examiner for these stories.

(6) *Impeachment of Federal Judge:* The St. Louis Post-Dispatch exposed unethical and corrupt practices by Federal Judge George W. English of Illinois in the 1920's. As a result of the stories English was impeached.

(7) *Labor Racketeering:* The Des Moines Register and Tribune exposed the unsavory tactics of the Teamsters and other unions in New York, New Jersey, Washington, Oregon and other states; the stories caused, among other things, the deposing of Dave Beck as Teamster president. In 1958 a Pulitzer Prize was awarded to the Des Moines Register for its stories.

(8) *Corruption of Illinois Newsmen:* In 1950, the St. Louis Post-Dispatch published a series of stories exposing that a number of downstate Illinois newsmen were improperly placed on the payroll of the State of Illinois. The story resulted in an end to this sordid practice and the newspaper received a Pulitzer Prize for its coverage.

6. For all of the foregoing reasons, the Tribune Company requests leave of Court to submit a brief as *amicus curiae* in this cause.

Further affiant sayeth not.

W. D. MAXWELL.

SUBSCRIBED AND SWORN to before me this _____ day of _____, A. D. 1961.

DOLORES M. FIGHEL,
Notary Public.